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A STUDY ON MODERN CHALLENGES ON TRADITIONAL CONCEPT OF PROPERTY OWNERSHIP

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ABSTRACT

Ownership is the most powerful right than other right and it is sole and absolute right. This right confers to utilize, prevent from other to utilize something, authority to destroy, alienate the property. Collection of right gives powers to the term ownership. Meanwhile to deal consequences arises in property. Any damages occurred or incurred over the property, go for the justice. Material things remains only give relief. In the modern era, given clear sketch of all way to reach the justice. we can enjoy the fruit of relief in the different way- in current scenario. Keynotes; property, right, ownership, power, relief.

INTRODUCTION

Modernist era, widely contributes its activism in the concept of ownership to sense the peaceful and challenges over the property. It serves separate navigation to face the litigation. There is an many bodies for speedy dispute resolution authority to uphold the justice to interest of the public. Each body has separate mechanism; procedures; etc. though reaches ultimate. Now a days to prevent ownership from others is the highest challenge, compare than to purchase legally. The maintenance of the property is also goes over the actual property values especially in urban areas. Such a poor thing is the ownership confirmation is not provided by government when its granted by government order.eg., slum clearance board, Panjami Lands; some owners of the respective land not obtaining their ownership title over the property.

WHERE DO PROPERTY RIGHTS COME FROM?

Property rights come from culture and community. A person living totally apart from others, on a remote island, does not need to worry about property rights. When people come together,

however, the need for specific arrangements about property ownership becomes apparent. This group or community then defines and enforces rules of access to the benefits that come from owning land or other property.¹

WHO REALLY OWNS MY PROPERTY?

“This land is mine, mine to use and enjoy, mine to treat as I wish,” is a common sentiment among many owners concerning their rights to land. This is called the "human territorial imperative." Various actions by governments and courts in recent years suggest that private owners' property rights are shared with the public and that these rights are limited and can change over time. We are all part of a society that defines our rights and has the power to redefine them over time.²

The complex nature of property rights;

According to **Schlager and Ostrom** (1992), five basic rights are most relevant for the use of common resources. These are defined as:

1. Access: The right to enter a defined physical area and enjoy non-subtractive benefits (e.g., hike, canoe, seat in the sun).
2. Withdrawal: The right to obtain resource units or products of a resource system (e.g., catch fish, divert water).
3. Management: The rights to regulate internal use patterns and transform the resource by making improvements.
4. Exclusion: The right to determine who will have access rights and withdrawal rights, and how those rights may be transferred.
5. Alienation: The right to sell or lease management and exclusion rights.³

Legal Framework And Regulations Governing Private Property

Private property ownership in India is governed by a comprehensive legal framework comprising various statutes, regulations, and judicial precedents. The key legislative enactments and regulatory mechanisms include:

✚ **The Constitution of India:** The Constitution guarantees the right to property as a

¹ R.k.sinha, transfer of property, 2021 edition, law house publication.

² R.k.sinha, transfer of property, 2021 edition, law house publication.

³ R.k.sinha, transfer of property, 2021 edition, law house publication.

fundamental right under Article 300A, ensuring protection against arbitrary deprivation except by authority of law.

- ✚ **The Transfer of Property Act, 1882:** This legislation regulates the transfer of immovable property through sale, mortgage, lease, gift, or exchange, defining legal mechanisms and rights associated with property transactions.
- ✚ **The Registration Act, 1908:** The Registration Act mandates the registration of documents related to the transfer of immovable property, providing legal validity and authenticity to property transactions.
- ✚ **The Real Estate (Regulation and Development) Act, 2016 (RERA):** RERA aims to regulate the real estate sector, promote transparency, and protect the interests of property buyers through mandatory registration of projects and adherence to prescribed norms.
- ✚ **The Indian Stamp Act, 1899:** This legislation governs the payment of stamp duty on various instruments, including property transactions, ensuring revenue generation for the government and legal validity for documents.⁴

Current challenges in respect of ownership;

Land Acquisition and Eminent Domain:

Government acquisition of land for public infrastructure projects or development activities, under the principle of eminent domain, can disrupt private property rights and lead to compensation disputes. **State of Haryana v. Subhash Chander** the Supreme Court held that the annual increase in compensation for land acquisition can range from 8% to 15% per year. The court considered the period of time to be a major factor in determining the annual increase. In this case, the court decided that an 8% annual increase was just and proper, instead of the 15% increase awarded by the High Court.⁵

Subletting

Subletting is a common practice in India, whereby a tenant rents out part or all of the property they have been renting to another individual, without the knowledge or consent of the landlord. This practice is generally done without the landlord's permission and can lead to several issues.

⁴ R.k.sinha, transfer of property, 2021 edition, law house publication.

⁵ <https://www.wrightresearch.in/encyclopedia/chapter-report/chapter-6-challenges-and-investor-overview-of-indias-real-estate-sector/>

First, subletting can lead to a violation of the rental agreement between the landlord and the tenant, resulting in the tenant being evicted from the property. Second, it may also result in an additional financial burden on the tenant since they may be responsible for paying the rent of the subletting tenant if they fail to do so. Finally, it may also lead to disputes between the landlord and the tenant regarding the condition of the property, as well as the payment of rent. **Gurubachan Singh And Anr vs Ram Niwas**, states that eviction is the only appropriate remedy for subletting without the landlord's permission.⁶

Double Documents

Double Documents and Duplicate Documents are not one and the same. Sometimes Double Document emerge after the Original went missing. After filing the police complaint and giving Ads in the Newspapers, the Seller sometimes would sell the Property with the help of Copy of Document. There may be occasions when the Seller gets back the lost Original. He may decide to sell the property once again with the help of this lost original. Mortgaged

properties or properties in judicial custody also give scope for Double Documents. Owners of such properties may also sometimes indulge in this practice. They may Settle the property in favour of someone close to them, create the Settlement Deed and sell it. In such cases, two persons will hold on to the same property documents. Both Originals. **Mani vs The Sub Registrar** This case from July 1, 2024, states that a co-owner can sell their undivided share without needing a no objection certificate from the previous purchaser.⁷

Unauthorized Alterations

Doing alterations in your rental house outside the permitted capacity is called unauthorized alterations. Often it is seen tenants make unauthorized alterations without the landlord's permission, such as painting the walls, changing fixtures, or making structural changes and when landlords find that their leased property has been changed without their consent, affecting the value of the property, it will be a matter of dispute or potential legal issues. Both tenants and landlords need to be aware of their rights and responsibilities when it comes to unauthorized alterations. If the tenants wish to get any modifications in the property they should

⁶ <https://www.sconline.com/>

⁷ <https://www.chennairealities.in/guide-to-verify-authenticity-of-the-documents-and-seller-of-a-plot-or-land/#:~:text=Double%20Documents,-Double%20Documents%20and&text=There%20may%20be%20occasions%20when,give%20scope%20for%20Dou%20Documents.>

always seek the consent of the owner, while the landlords should make sure that they understand the terms of the rental agreement and take action in case any unauthorized alterations are done to their property. Tenants easily sue in the ground of permanent injunction; it makes huge headache to landlord revert the ownership. **Supreme court ruled** that Injunction Suit To Protect Possession Not Maintainable When The Supreme Court ruled that a suit for injunction may not be maintainable if the plaintiff fails to prove the title of the property.⁸

Privacy and Access

Privacy and access in a rental house in India are important considerations for both the tenant and the landlord. While the property belongs to the landlord, a tenant has the right to acquire easements once he or she takes possession of the property. Tenants have the right to privacy and security in their rental property, which means that landlords must respect the tenant's right to privacy and not intrude unless it is necessary. It is infringing on the tenant's right to privacy and his right to easement if the landlord enters the premises now and then or suddenly without serving any reasonable notice.

This includes but is not limited to entering the property without permission, taking photographs without consent, and sharing personal information with third parties. Access is also an important consideration in a rental house in India. Landlords must provide tenants with access to the property, including keys and locks, and should ensure that common areas are adequately monitored and maintained. Furthermore, tenants should expect their landlords to respond to maintenance requests promptly.

Disputes with landlords over lease agreements or rental payments

The Supreme Court, while affirming impugned judgment of the High Court, observed that "mere living in a particular house by itself would not mean that the said house is under ownership of the person living therein in his individual capacity or even that it is within the area of operation of the society". **Saravanan vs kuppammal 2024**, the court found that, while pendency of the suit, ownership shall not affect due to the nonrenewal of the agreement.⁹

Illegal Activities

Rental properties should always be used for the purpose they are being rented for. It is strictly

⁸ <https://restthecase.com/knowledge-bank/landlord-and-tenants-disputes-in-india>

⁹ <https://www.scconline.com/>

prohibited for tenants to engage in any illegal or unlawful activity on the property. As a result, the landlord is always in the driver's seat and tenants can forfeit their security deposits. **T.N. Godavarman Thirumulpad vs Union Of India And Ors. on 6 March, 2024¹⁰**

Property Title Disputes:

Title disputes are a significant challenge in property transfer. A lack of clear and marketable titles can lead to legal complications and disputes among the parties involved. Conducting a thorough title search and verification, along with obtaining necessary certificates and clearances, can help mitigate the risk of title disputes. It is advisable to seek assistance from legal experts and perform due diligence to ensure a clean title.

Encumbrances and Liabilities:

Properties in India may have encumbrances, such as mortgages, liens, or pending legal claims. These encumbrances can hinder property transfer and create liabilities for both buyers and sellers. Conducting a comprehensive search for encumbrances and obtaining a clearance certificate from the relevant authorities is crucial to ensure a hassle-free transfer. Engaging legal professionals to review all relevant documents can help identify and address potential liabilities.

Real estate concepts related to disturbing ownership:

Blockbusting; when real estate agents use illegal practices to pressure property owners into selling their properties. Real estate agent malpractices if you are aggrieved by a real estate agent's actions, you can file a complaint with the RERA Authority, the Consumer Protection Act, 2019, or go to court. They promise to their clients within certain period ownership will reach in their respective names. But they breach their promises and demand more money and not confers the ownership.

Adverse possession

When a person takes possession of another person's property, intentionally or unintentionally, and claims title to it. The adverse possessor, also known as the disseisor, can claim the property without paying the owner. It provides more advantages to person without ownership over the property in 12 or more years; and it also vis versa to ownership holders. Court ensures his/her

¹⁰ <https://www.sconline.com/>

rights over the property, based on adverse. Huges no. of. ownership are transfers helds in the scope of adverse. real owners of the property lost their rights without consideration.¹¹

Lack of Transparency:

Transparency in property transactions is essential to building trust between buyers and sellers. Lack of transparency can lead to fraudulent practices and disputes. Implementing measures such as proper documentation, disclosure of property-related information, and verification of ownership documents can enhance transparency. Buyers and sellers should also engage reputable real estate agents and legal professionals to ensure transparency throughout the process.

Stamp Duty and Registration Costs:

Stamp duty and registration costs are significant financial considerations of property transfer. The varying rates of stamp duty across different states in India can pose challenges in estimating the total cost involved. It is essential to research and understand the applicable stamp duty rates and registration costs in the specific jurisdiction.¹²

Taxation and Capital Gains:

Taxation, including capital gains tax, is an important aspect of property transfer. Understanding the tax implications and compliance requirements is crucial for both buyers and sellers. Seeking guidance from tax professionals can help ensure proper tax planning and compliance, minimising tax liabilities and avoiding legal issues.

Inheritance and Succession Issues:

Inadequate estate planning, ambiguous legal provisions, and cultural norms regarding inheritance often result in familial conflicts and legal complexities regarding property succession. Legal heirs of the original owner are generally barred from filing a suit to claim a property more than 46 years after it was transferred. However, a suit can be filed under section 34 of the Specific Relief Act of 1963 if the legal heirs are attempting to interfere with the current owner's possession. **K.C. Laxmana v. K.C. Chandrappa Gowda**, 2022 SCC OnLine SC

¹¹ R.k.sinha, transfer of property, 2021 edition, law house publication.

¹² https://economictimes.indiatimes.com/news/india/waqf-through-the-ages-how-rs-1-lakh-crore-property-owner-board-acquires-land-and-what-the-govt-aims-to-change/articleshow/112365585.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

471¹³ The Supreme Court held that a Hindu father or any other managing member of a Hindu Undivided Family has power to make a gift of ancestral property only for a 'pious purpose' and what is understood by the term 'pious purpose' is a gift for charitable and/or religious purpose. Therefore, a deed of gift regarding the ancestral property executed 'out of love and affection' does not come within the scope of the term 'pious purpose'....

Encroachments and Trespassing:

Unauthorised occupation of land, encroachments on public spaces, and illegal constructions pose significant challenges to property owners, leading to disputes and legal battles. Especially land in where the good market value, paramount in encroachments. Subsequently the person who holding majesty in particular area, commonly involves trespassing attitudes.¹⁴

Disputes with neighbours over property boundaries; such common thing in india and Indians, neighbourhood practices are extincting in now a days. Property boundary disputes with neighbors can be resolved through communication, surveys, and sometimes legal assistance:

Communicate: Try to communicate with your neighbor in a non-accusatory way. You can bring a survey and discuss the situation.

Consider a survey: A survey can help you understand the property lines.

Consider legal assistance: Involving a property disputes solicitor early on can help prevent the situation from escalating. A lawyer can help you assert your rights and record a document at the registry of deeds.

Consider an easement: You could agree to a small easement to resolve the issue¹⁵

What are the challenges posed by Waqf?

Government property as Waqf: The Bill states that any government property identified as waqf will cease to be so. The Collector of the area will determine ownership in case of uncertainty, and submit a report to the state government. If deemed a government property, he will update the revenue records. **Litigation and Mismanagement:** The Waqf Act, 1995, and its 2013 amendment have been criticized for inefficacy, leading to issues like encroachment, mismanagement, ownership disputes, and delays in registration and surveys.¹⁶

¹³ <https://www.scconline.com/>

¹⁴ R.k.sinha, transfer of property, 2021 edition, law house publication.

¹⁵ R.k.sinha, transfer of property, 2021 edition, law house publication.

¹⁶ <https://economictimes.indiatimes.com/news/india/waqf-through-the-ages-how-rs-1-lakh-crore-property-owner-board-acquires-land-and-what-the-govt-aims-to-change/articleshow/112365585.cms?from=mdr>

Conclusion

Thus so far in india have many pending cases related to ownership disputes in India, including: Real estate cases, As of August 2024, there were 50,258 real estate cases pending in consumer courts Land disputes are the largest category of pending cases in India, making up about 66% of all civil cases. Supreme Court cases, About 25% of all cases decided by the Supreme Court involve land disputes. District court cases, As of 2016, there were more than 22 million cases pending in district courts, with more than 6 million of those cases having been pending for more than five years. The pendency of cases in India is a major challenge to the country's judiciary.

Some reasons for the backlog include: A low judge-to-people ratio, Lack of financial, technical, and infrastructural capacity, Poor enforcement of court decisions by the government, Outdated land records and surveys.

